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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,991

03/12/2004

Sahn Lam

5693P054

6881

48102

7590

09/19/2006

NETWORK APPLIANCE/BLAKELY
12400 WILSHIRE BLVD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

EXAMINER

LIE, ANGELA M

ART UNIT

PAPER NUMBER

2163

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/798,991	Applicant(s) LAM ET AL.	
	Examiner Angela M. Lie	Art Unit 2163	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 and 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/6/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Restrictions

- I. Claims 1-7, drawn to the method of generating policy, classified in class 707, subclass 102.
- II. Claims 8-15, drawn to the apparatus and method of selecting one of the plurality of replication policies and replicating it, classified in class 707, subclass 204.
- III. Claims 16-21, drawn to searching for replication policy according to specified attributes, classified in class 707, subclass 6.

1. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the system of group I does not require a Graphic User Interface as clearly defined in group II, and method of group II does not require a step of generating replication policies as clearly disclosed in group I.

2. Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP §

806.05(e)). In this case the method of group III does require the step of generation of replication polices, as clearly required by group I.

3. Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case method of group III does not require Graphic User interface and cloning of replication policy as clearly required by group II.

Election

4. During a telephone conversation with Jordan Becker on September 11, 2006 a provisional election was made with traverse to prosecute the invention of group II, claims 8-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-7 and 16-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 8, 9 and 11 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. Claims 8, 9 and 11 fail to disclose useful result. Each claimed method shall present concrete, tangible and useful result, and in this instance

this requirement is not met. The applicant states that the replication policy is cloned, but how the duplicated data presents the useful result? In majority of cases the duplication of a file on the same storage device is unwanted because it is considered redundant and it occupies more space than necessary.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 8-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Therrien et al (US Publication 2004/0093555).

As to claims 8 and 12, Therrien discloses a method and a graphical user interface ("GUI") (as shown in figure 4) comprising: a representation of a data structure containing a plurality of data replication relationships (Figure 4, frequency of replication (14), number of replicas (15)) being implemented by a plurality of storage servers (Figure 3, multiple file-servers), the representation of the data structure being configured to enable a user to apply at least one of a plurality of replication policies to each data replication relationship (Figure 4, number of replicas, and backup frequency); and a tool to allow the user to select one of the plurality of replication policies (i.e. selecting a policy in the specified file system, paragraph 33) and to automatically clone the selected replication policy (paragraph 69, i.e. replicated across multiple repositories), wherein the

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cloned replication policy has the same attributes as the replication policy (if the file is replicated it has to include the same attributes, because replication means producing multiple copies of the same file), but a different name (Figure 4, policy name which also can be changed, so that the replicated file can have a different name than the original source).

As to claims 9 and 13, Therrien discloses the GUI further comprising a policy editor to enable the user to rename the cloned replication policy (Figure 4, policy name tab).

As to claims 10 and 14, Therrien discloses the GUI wherein the policy editor further enables the user to change any attributes of the cloned replication policy (Figure 4, elements 14 or 15).

As to claims 11 and 15, Therrien discloses the GUI further comprising allowing the user to create additional replication policies (paragraph 33, since a storage administrator can create a share, then it is also equivalent with creating an additional policy, since each share has a unique policy).

The Prior Art

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Zalewski et al (US Publication 2005/0010529) disclose a method and apparatus for building a complete data protection scheme wherein a replication policy is used to prevent from logical failures among the

replicated files, and further the replication policy can be modified by a user.

- Rodriguez et al (US Publication 2005/0120025) discloses a policy based management of an redundant array of independent nodes, wherein the system comprises a plurality of replication policies.
- Bantz et al (US Publication 2004/0098419) disclose a method and apparatus for a migration assistant wherein replication policies are accessed in order to perform the migration of data.

Inquiry

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela M. Lie whose telephone number is 571-272-8445. The examiner can normally be reached on M-F.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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